IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeals No.173 & 179 of 2005

Date of decision : March 31, 2011

Cr.A No.173/2005

Devi Singh and another ....Appellants.

Versus

State of H.P. ...Respondent.

Cr.A No.179/2005

Teju Ram ...Appellant.

Versus

State of H.P. ...Respondent.

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The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?. Yes.

For the Appellants : Mr. K.D. Sood, Advocate, with Mr. Sanjeev Sood, Advocate, in Cr.A No.173 of 2005.

Mr. G.D. Verma, Senior Advocate, with Mr. Romesh Verma, Advocate, in Cr.A No.179 of 2005.

For the Respondent : M/s Ramesh Thakur & J.S. Guleria Assistant Advocate Generals.

Surjit Singh, Judge(Oral)

Devi Singh (now Dead) and Prem Dass, appellants in Criminal Appeal No.173 of 2005; Teju Ram, appellant in Criminal Appeal No.179 of 2005, have assailed the same judgment, i.e. judgment dated 1st April, 2005, of learned Special Judge, whereby they have been convicted of offences, under Sections 467, 468, 471, 420, 218 and 120-B of the Indian Penal Code and Section 13(2) of the

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Whether reporters of the local papers may be allowed to see the judgment?

Prevention of Corruption Act, 1988 and sentenced to undergo imprisonment of varying terms, for the aforesaid offences and also to pay fine.

2. A case was registered against the appellants and one Kamla Nand (Tehsildar), on the basis of an inquiry conducted into a complaint made by Tara Chand Sharma, Pradhan of Gram Panchayat Totu, to the Forest Minister, that appellant Teju Ram had been allotted a portion of Government forest, with thick Deodar plantation, by the revenue officials, to cause wrongful gain to him. Complaint was marked to the Enforcement Department. Inquiry was conducted by an Inspector of Enforcement Department, on the direction of the Superintendent of Police, who submitted report Ex.PW-17/B. On the basis of this report, a case was registered, vide FIR No.35 of 1994.

3. Investigation of the case revealed that appellant Teju Ram submitted an application, in the name of his mother Kesu, for grant of five bighas land, under Nautor Rules, in the area of Chak Totu. The said application is Ex. PW-11/B. With this application, he submitted Jamabandi as also Tatima (site plan of a portion of a big chunk of land, bearing Khasra No.928/736/802). That Tatima is Ex. PW-11/E. Appellant Devi Singh, in his capacity as Kanoongo, made report Ex. PW-11/G, that there stood no trees on the land, shown in Tatima Ex. PW-11/E. Appellant Prem Dass, in his capacity as Patwari,

initialed that report. Report of Kanoongo was submitted to Kamla Nand, who was a Tehsildar. He submitted the matter to the SDO (Civil). On the basis of report of field revenue staff, land was granted, under Nautor Rules, in the name of mother of appellant Teju Ram.

4. On the death of the mother of appellant Teju Ram, land was mutated in his name. In the year 1986-87, when plantation was taking place, on a piece of land, in the area of Totu, appellant Teju Ram objected to plantation, claiming that the land had been allotted to his mother, under Nautor Rules. It was then that a complaint was lodged with the Forest Minister, against appellant Teju Ram. Police, during investigation, got the land bearing Khasra No.406, which was stated to be the new number of land bearing Khasra No.928/736/ 802/1, demarcated from a team of revenue officials, namely PW-3 Gurdev Singh (Patwari) and PW-14 Piare Lal (Naib Tehsildar), in the presence of Enforcement Inspectors, PW-19 Jia Lal and PW-21 Sukh Ram. Demarcation report Ex. PW-14/A was submitted by PW-14 Piare Lal. Per this report, there stood 33 Deodar trees, on land bearing Khasra No.406. Tatima (site plan of Khasra No.406) was made part of the report. The same is Ex. PW-3/B.

5. On the basis of the aforesaid report of PW-14 Piare Lal, Investigating Agency concluded that there stood Deodar trees, numbering 33, besides small plantation of

Deodar, on the land, which had been allotted to appellant Teju Ram and with regard to which land appellants Patwari Prem Dass, Kanoongo Devi Singh and Tehsildar Kamla Nand had reported that no trees existed thereon.

6. The three appellants and Tehsildar Kamla Nand were charged with the various offences, by the trial Court. Appellants and Kamla Nand pleaded not guilty.

7. Prosecution examined 24 witnesses to bring the charge home to the appellants and Kamla Nand. Appellants denied, in their statements, under Section 313 of the Code of Criminal Procedure, that they had committed any crime or that there stood any tree, on the land, with respect to which application Ex. PW-11/B had been submitted. Trial Court acquitted Tehsildar Kamla Nand, but convicted the present appellants, including deceased Devi Singh.

8. I have heard learned counsel for the appellants as also learned Assistant Advocate General and gone through the record.

9. It is clear from prosecution's own evidence that the land, which had been applied for by appellant Teju Ram, in the name of his mother and was granted, under Nautor Rules, was different from the land, in respect of which demarcation report Ex. PW-14/A and the lists of trees, which are Ex. PW-2/A and Ex. PW-7/A, based on such demarcation, were prepared.

10. PW-14 Naib Tehsildar Piare Lal, who is the author of demarcation report Ex. PW-14/A, himself admitted that he gave the demarcation, on the basis of copy of Musabi, pertaining to Khasra No.406, which, as per Jamabandi, is the new number of old Khasra No.928/726/802/1, that was allotted to the mother of appellant Teju Ram, under Nautor Rules. The witness admitted that the Tatima, he used was Ex. PW-3/B, while the Tatima, on the basis of which Nautor was granted, is Ex. PW-11/E. The witness also admitted that the two Tatimas are different from each other, not only in shape but also in dimensions. If that is so, land bearing Khasra No.406, stated to be the new number of the land, which was allotted to appellant Teju Ram's mother, under Nautor Rules, does not stand connected with the land that was applied for by appellant Teju Ram and was allotted in the name of his mother. It is not only PW-14 Piare Lal, who has admitted these facts, but the Patwari, who accompanied him, also says that Tatima of Khasra No.406, on the basis of which demarcation was given, does not tally with the Tatima of the land, which was submitted with the application as also the Tatima, which was drawn on the mutation order, that was passed in favour of the mother of appellant Teju Ram, after the grant of Nautor.

11. Tatima of the land, which was allotted to the mother of appellant Teju Ram, is Ex. PW-11/E. This very

map was drawn on mutation order, copy Ex. PDD. The shape of the piece of land, shown in Tatima Ex. PW-11/E and Ex. PDD, is the same. However, the land, which was demarcated by PW-4 Piare Lal and on which 33 trees and plantation of Deodar trees were found, is different from the land, shown in Tatima Ex. PW-11/E and Tatima on mutation order Ex.PDD. Tatima of the land, demarcated by PW-14 Piare Lal, is Ex. PW-3/B. Its shape and dimensions are totally different from the shape and dimensions of the piece of land, shown in Tatimas Ex. PW-11/E and Ex. PDD.

12. In view of the abovestated position, finding of the trial Court that appellant Teju Ram applied for a piece of land, on which there stood a large number of Deodar trees and the revenue officials made false reports that no trees stood on the land applied for by him, cannot be substantiated. Consequently, both the appeals are accepted, judgment of the trial Court, convicting and sentencing the appellants, is set aside and the appellants are acquitted.

Both the appeals stand disposed of.

March 31, 2011(sd) (Surjit Singh), J